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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,364	07/27/2001	Gary Curtis Gehrke	403	7594

7590 08/25/2004  
BIRCH, STEWART, KOLASCH & BIRCH  
P.O. Box 747  
Falls Church, VA 22040-0747

EXAMINER

DUVERNE, JEAN F

ART UNIT	PAPER NUMBER
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2839

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/916,364

**Applicant(s)**

GEHRKE, GARY CURTIS

**Examiner**

Jean F. Duverne

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 8/11/2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stockman et al (US005774617A ).

Stockman et al discloses, in figures 1-7 (see Attachment 1), an insert removably provided within a fiber optic cable management tool comprising:

- a fiber optic cable management tool (see attachment)
- at least one arcuate portion on said fiber optic cable management tool
- a first curved member (see attachment) on said insert having a first curved portion and a second curved portion (see attachment)
- a second curved member on said insert having a first curved portion and a second curved portion
- a third curved member on said insert having a first curved portion and a second curved portion (see attachment)
- said first, second, and third curved members being formed integrally
- a channel formed between the second curved portion of the first curved member and the first curved portion of the third curved member

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- a channel formed between the arcuate portion of the fiber optic cable management tool and at least a curved member of the insert (see attachment)
- a channel formed between the curved member and the at least one arcuate portion
- all said curved portions and said channels having a radius that exceeds the minimum bend radius of a fiber optic cable having a diameter less than or equal to 1.7 millimeters (column 1, line 64 - column 2, line 32)
- said channel having a smaller width than a channel provided in the fiber optic cable management tool
- at least one curved member (the third) having first, second, and third curved portions
- a portion on the fiber optic management tool that permits manual grasping (see Attachment 1).

However, Stockman's device fails to explicitly concave shape for the arcuate portion of the tool management or the convex-shaped curved portion for the curved member. It would have been obvious to one having ordinary skill in the time the invention was made to have the arcuate portion of the tool management with the concave shape and the curved member with the convex-shaped, since such a modification would have involved a mere change in shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1976).

***Response to Amendment***

Applicant's arguments filed with the amendment on 2/10/2004 have been fully considered but they are not persuasive. The claims do not define structural structure features that distinguish over prior art: For example, Stockman et al discloses, in figures 1-7 (see Attachment 1), an insert removably provided within a fiber optic cable management tool comprising: a fiber optic cable management tool; at least one arcuate portion on said fiber optic cable management tool a first curved member on said insert having a first curved portion as stated above. The concave shape for the arcuate portion of the tool management or the convex-shaped curved portion for the curved member as amendment added to the claims is not enough to put claims in condition for allowance (see the above rejection).

***Conclusion***

Claims 5-7 are allowed. Prior art fails to disclose the third member with the second curved portion joint each other at a point between the first curved and second curved members with the rest of the claim limitations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean F. Duverne whose telephone number is (571) 272-2091. The examiner can normally be reached on 9:00-7:30, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Field can be reached on (571) 272-2092. The fax

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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JFD

08/23/2004



Jean Frantz Duverne  
Primary Examiner  
Art Unit 2839